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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

KWON, MICHAEL J

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,969

Applicant(s)

RAJEWSKI, ROBERT C.

Examiner

Michael J. Kwon

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 3, line 6 sets forth a hydraulic power supply powered by the internal combustion engine. The scope and enablement of this function is difficult to understand, being that IC engines and hydraulic cylinders are independent and distinct sources of power.

Clarification is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler in view of Marazzo et al.

Regarding claims 1, 4 and 5, Hensler shows a utility pole installation system 20, including an excavating auger 36, but he differs from the present invention because he does not

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expressly show an utility pole installation system including a positioner that is mounted on the chassis of a hydrovac unit and between the cab and the mechanical components. Marazzo et al. discloses a hydrovac unit 6, 7, 10 having a chassis (part of the truck), the chassis having a front and rear (Fig. 8), a mud tank 10 mounted on the rear of the chassis and a cab (Fig. 8) mounted on the front of the chassis; mechanical components 6 for the hydrovac 6, 7, 10 unit being mounted on the chassis between the cab and the mud tank 10. The auger of Hensler removes the soil from the hole, but does not remove the soil from the area around the hole. The hydrovac of Marazzo et al. not only removes the soil from the hole, but removes the soil from the area around the hole. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Hensler such that the excavating auger on chassis is replaced by a hydrovac unit on chassis as taught by Marazzo et al. so to remove the soil from the area around the hole.

Regarding claim 2, Hensler shows a utility pole installation system 20, including an excavating auger 36 and a utility pole positioner 34 mounted on the chassis, and a hydraulic power supply 26 mounted on the chassis (inherent to the truck) powering both the utility pole positioner and the auger. He differs from the present invention because he does not expressly show a utility pole positioner mounted on the chassis of the hydrovac unit. Marazzo et al. shows a hydrovac unit 6, 7, 10 having a chassis and an internal combustion engine mounted on the chassis (Fig. 8), and a hydrovac boom 9 mounted on the chassis (Fig. 8). The auger of Hensler removes the soil from the hole, but does not remove the soil from the area around the hole. The hydrovac of Marazzo et al. not only removes the soil from the hole, but removes the soil from the

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area around the hole. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Hensler such that the auger is replaced by the hydrovac unit as taught by Marazzo et al., and have the hydrovac boom as well as the utility pole positioner be powered by the hydraulic power supply so that the truck can perform both excavating and pole positioning functions, so to remove the soil from the area around the hole.

Further in regards to claim 2, Hensler shows one hydraulic power supply for both the auger and the pole positioner. His excavating function is performed by the auger, rather than the hydrovac unit as claimed. Hensler is evidence that ordinary workers in the art of hydraulic power would recognize the benefit of using one power source for multiple functions, such as supplying power to both auger and pole positioner, or to hydrovac unit and pole positioner. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use one power supply to power the hydrovac unit and pole positioner in combination, so to efficiently utilize power.

Regarding claim 3, Hensler discloses a hydraulic power supply 26 powered by the internal combustion engine (via battery and alternator means) supplying power to the utility pole positioner 34 and to the auger 36, and an internal combustion engine mounted on the chassis (inherent to a truck). He differs from the present invention because he does not expressly show a hydrovac unit having a chassis with the hydrovac boom mounted on the chassis; a utility pole positioner mounted on the chassis of the hydrovac unit; and the hydrovac boom and the utility pole positioner are each powered by the hydraulic supply. Marazzo et al. shows a hydrovac unit 6, 7, 10 having a chassis and an internal combustion engine mounted on the chassis (Fig. 8); and

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a hydrovac boom 9 mounted on the chassis (Fig. 8). Marazzo et al. teaches that ordinary workers in the art of excavating dirt before positioning a pole would recognize the benefit of mounting a utility pole positioner on the chassis of the hydrovac unit with the hydrovac unit having a hydrovac boom, with the hydrovac boom and the utility pole positioner both being powered by the hydraulic supply. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the functions of Hensler and Marazzo et al. such that a utility pole positioner is mounted on the chassis of the hydrovac unit with the hydrovac unit having a hydrovac boom, with the hydrovac boom and the utility pole positioner both being powered by the hydraulic supply, in order to achieve the dual functions of hydrovac excavation and pole positioning, both of which are well known in the art.

Response to Arguments

Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kwon whose telephone number is 1-703-305-5310. The examiner can normally be reached on Monday - Friday, 8 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on 1-703-308-3248. The fax phone numbers for the

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organization where this application or proceeding is assigned are 1-703-308-0552 for regular communications and 1-703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-1113.

MJK
March 10, 2003



EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600